

**STAFF REPORT
ZONING BOARD OF ADJUSTMENT
Thursday, March 22, 2018
9:00 a.m.
Room 105 Courthouse Annex
Cascade County Commissioners Chambers**

Variance request

Subject Property Information

Name & Address of Applicant	Powder River Development Services 219 S Wooddale Ave. Eagle, ID 83616
Name & Address of Owner	GTP Acquisition Partners II LLC PO Box 723597 Atlanta, GA 31139
Geo Code:	02-3016-09-2-05-13-0000
Parcel Number:	0002622350
Existing Zoning:	Commercial (C) District
Legal Description:	Section 09, Township 20 N, Range 04 E
Requested Action and Purpose:	Variance request to allow an additional height extension on an existing non-conforming cell-tower.
Total Land Area:	0.057 Acres
Adjacent Land Uses & Zoning:	North: Commercial South: Multi-Family (Great Falls R-6) West: Commercial East: Commercial
Current Land Use:	Cell Tower
Applicable Regulations:	Sections 8.8, 9.5, and 16.1 of the Cascade County Zoning Regulations

Special Information

1. Section 8.8 (1) of the Cascade County Zoning Regulations provides the following required setbacks for tower and studio facilities:

(1) ...; the setback to property boundaries for all other tower/antenna structures must be the height of the tower plus twenty (20) feet (example: a 100 foot tall tower must be 120 feet from all property boundaries).

2. Section 16.1 of the Cascade County Zoning Regulations provides the following height restrictions:

16.1 MAFB RUNWAY AREA

The following height limits are based on the elevation of the helicopter runway at Malmstrom (3,526 ft.) which is based on the North American Vertical Datum of 1988 (NAVD 88).

...

MOD-C (Inner Horizontal Surface)

No structures greater than 150 feet in height.

...

Any proposed structures exceeding the above heights will require the approval of a variance by the Zoning Board of Adjustment. A copy of the application will be sent to Malmstrom for review and comments. Any comments or recommended mitigations will be forwarded to the Zoning Board of Adjustment to consider with their decision. If no comments are received within 15 working days, it will be determined Malmstrom's reviewing staff had no objections. A height variance may only be denied due to a concern expressed by the US Military that cannot be mitigated to the Military's satisfaction.

3. The following definition is taken from the Cascade County Zoning Regulations:

VARIANCE

A variance is a relaxation of the terms of these regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship. As used in these regulations, a variance is authorized only for height, area, and size of structure, size of yards and open spaces, signage, landscaping, or as otherwise specifically provided for in these regulations. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or adjoining zoning districts.

4. Section 9.5.4 of the Cascade County Zoning Regulations requires the concurring vote of three members of the Zoning Board of Adjustment in order to approve a variance request.

Analysis

The applicant is requesting a variance to allow a fifteen (15) foot extension to be added to an existing telecommunications tower, from 110 feet to 125 feet.

- (1) **The variance is not contrary to the public interest.**

The Applicant responded: *This variance request would not be contrary to the general public because we are asking to extend the height of an existing cellular communications facility in*

order for this existing tower to feasibly hold the addition of a cell carrier, which in return will help the public and expand their network capability.

Staff believes the variance will not be contrary to the public interest. The tower is already in place, and provides a valuable resource to the general public. The extension will create more competition in the telecommunications industry and will only be an extension comparable to 13.6% of the existing structure.

(2) A literal enforcement would result in an unnecessary hardship, owing to conditions unique to the property.

The Applicant Responded: A literal enforcement of regulations would result in an unnecessary hardship because the location of this property is already not meeting the setback requirements for a telecommunication facility. Extending the height of this tower to allow room for an additional cell carrier would avoid the need for a completely new tower to be built, saving time, money and the land. The addition of a carrier onto an existing tower would help the general public in relation to the cell coverage in the area while avoiding the eye sore of a new tower going up.

Staff acknowledges that the existing non-conforming use of this tower does not meet the required setbacks under the current version of the County's zoning regulations. However, removing or relocating this structure would be impractical and detrimental to existing telecommunications services. Allowing this structure to be extended as the applicant proposes would eliminate the need for an additional tower to be constructed in the area and would provide a more immediate improvement to services.

(3) The spirit of this Section would be observed and substantial justice done by granting the variance.

The Applicant Responded: There would be multiple positive aspects created from granting this variance request. As stated before, extending the height of this already existing cellular communication facility would allow an additional cell carrier to locate on the tower. The addition of a new cell carrier onto this existing tower would help the community by expanding their cell coverage, while avoiding a completely new tower to be built.

Staff believes that substantial justice would be done by granting the variance as the existing non-conforming use would be expanded, however would do so in a way that will create minimal visual disturbance and preserve other areas of land from further development. Additionally, topographic maps indicate the base of the structure sits at an elevation of 3466 feet, and sits in the MOD-C (Inner Horizontal Surface) area for the Malmstrom Air Force Base Runway. County Regulations in Section 16.1 state that no structure in this zone may extend above 150 feet from the height of the runway, declared at 3,526 feet. $3466 + 125 = 3591$, less than the restricted height of $3526 + 150 = 3676$ feet. Given the proximity to the base and the overall proposed height of the structure, Malmstrom Air Force Base was notified, and did not express any concerns.

Motions:

The following motions are provided for the Board's consideration:

1. the variance to allow for a height extension (15 feet) of an existing telecommunications tower be **denied**,
or
2. the variance to allow for a height extension (15 feet) operation of an existing telecommunications tower be **approved** subject to the following condition:
 - a. the applicant will ensure compliance with all County, State or Federal permits prior to commencing with construction on the subject property.

Attachments: Variance Application
 Vicinity Map
 FAA/FCC Determination Letter